

EXPLANATORY STATEMENT

Issued by the authority of the Assistant Minister for Social Services

Aged Care Act 1997

Accountability Principles 2014

The *Aged Care Act 1997* (the Act) provides for the regulation and funding of aged care services. Persons who are approved under the Act to provide aged care services (approved providers) can be eligible to receive subsidy payments in respect of the care they provide to approved care recipients.

Section 96-1 of the Act allows the Minister to make Principles providing for various matters required or permitted by a Part or section of the Act.

Among the Principles made under section 96-1 are the *Accountability Principles 2014* (the Principles).

The Principles describe:

- arrangements for access to residential aged care services by certification assessors, the CEO of the Australian Aged Care Quality Agency (the Quality Agency), quality assessors and the Aged Care Commissioner;
- arrangements for access to home care services by the CEO of the Quality Agency and quality reviewers;
- the responsibilities of an approved provider in giving certain information to the Secretary or the Minister;
- the responsibilities of approved providers in relation to financial reporting;
- the responsibility of an approved provider to participate in the aged care workforce census;
- the responsibilities of an approved provider in relation to staff members and volunteers requiring police certificates; and
- the circumstances in which the requirement to report allegations or suspicions of reportable assaults does not apply.

From 1 July 2014, these Principles will replace the existing *Accountability Principles 1998*. The main differences between these principles are as follows:

- the provisions relating to access have been re-worked so that they are clearer and so that the responsibilities of the people accessing services in accordance with these provisions, compared to the responsibilities of approved providers in enabling access, are clearly articulated and differentiated;
- the new principles include arrangements for access to home care services by the Chief Executive Officer (CEO) of the Quality Agency and quality reviewers. From 1 July 2014, the Quality Agency will become responsible for undertaking quality reviews of home care services. The changes to the principles enable the CEO of the Quality Agency and quality reviewers to have access to the premises of approved providers of home care services. These arrangements align with those that currently exist for residential care;

- the definition of police certificate has been expanded to be clear that it captures records held by CrimTrac (reflecting the practical reality that police certificates are often issued by CrimTrac rather than by the police);
- the responsibilities of approved providers of residential care in relation to financial reporting that were previously set out in the *Residential Care Subsidy Principles 1997* are now set out in these Principles;
- the responsibilities of approved providers of home care in relation to financial reporting that were previously set out in the payment agreement between the approved provider and the Secretary are now set out in these Principles;
- the existing provisions enabling the Minister to request information about accommodation bonds have been amended to also enable the Minister to request information about accommodation payments and accommodation contributions. These are two new types of payments for certain care recipients entering residential care on or after 1 July 2014; and
- the new principles have been re-drafted to reduce unnecessary complexity and make the principles generally more reader-friendly.

The Principles are a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

Consultation

In April 2012, the former Government launched a major program of aged care reforms. The reform agenda was developed in close consultation with the aged care sector, including consumers, industry and professional bodies.

As part of the consultation on the proposed changes to the Act, and to delegated legislation, arising from the reforms, the former Government communicated its intention to examine the delegated legislation and, where possible, simplify it.

This intent was communicated in November 2012, with the public release of a paper providing an overview of the proposed legislative changes. A video presentation detailing the proposed reforms was also made available online to assist members of the public to understand these changes.

During late 2012 and in the first half of 2013, briefing sessions were held across Australia to provide information and to explain, in detail, the proposed legislative changes included in the package of Bills introduced into Parliament on 13 March 2013. As part of these consultations, the intention to make related changes to delegated legislation was again discussed. For those interested members of the public unable to attend the briefings, the presentation, supporting handouts, a detailed Question and Answer document and an information video were made available online.

During March and April 2014, an exposure draft of these Principles was made available for comment on the Department of Social Services' website, along with an explanatory document entitled *Overview: Proposed changes from 1 July 2014 to the Aged Care Principles made under the Aged Care Act 1997 - April 2014*. Comments on the draft Principles were invited and taken into account in the finalisation of these Principles.

Regulation Impact Statement

The Office of Best Practice Regulation has advised that no RIS is required. (OBPR ID 16682).

Commencement

The Principles commence on 1 July 2014.

Details of the Accountability Principles 2014

Part 1 – Preliminary

Section 1 – Name of principles

This section states that the name of the principles is the *Accountability Principles 2014* (the Principles).

Section 2 – Commencement

This section states that the Principles commence on 1 July 2014.

Section 3 – Authority

This section provides that the authority for making the Principles is section 96-1 of the *Aged Care Act 1997* (the Act).

Section 4 – Definitions

This section defines certain terms used in the Principles.

Act means the *Aged Care Act 1997*.

business hours means the hours between 9am and 5pm on a business day.

certification assessor means a person or body authorised by the Secretary to perform a review of the certification of a residential aged care service in accordance with section 39-4 of the Act.

charge exempt resident is defined in section 44-8B of the *Aged Care (Transitional Provisions) Act 1997*. In summary, a charge exempt resident is a resident that occupied a bed in a nursing home on 30 September 1997, entered a residential care service at any time after 30 September 1997, and would have been eligible to pay an accommodation charge for the entry.

CrimTrac is further defined as the CrimTrac Agency. CrimTrac works together with Australia's police agencies to deliver the National Police Checking Service.

financial year for an approved provider is defined as having the meaning given by subsection 25(1).

A *police certificate* is a written statement of a person's criminal convictions prepared by the police or CrimTrac, which outlines the particulars of any such conviction.

premises, of a residential care service, means any place where the operation or administration of the service occurs. Premises of a home care service means the premises of the approved provider of the service (not the care recipient's home).

Quality Agency means the Australian Aged Care Quality Agency established under the *Australian Aged Care Quality Agency Act 2013*.

quality assessor means a person registered as a quality assessor by the Chief Executive Officer of the Quality Agency in accordance with the *Quality Agency Principles 2013*.

quality reviewer is defined in the *Quality Agency Principles 2013* to mean a member of the staff of the Quality Agency to whom powers or functions of the Chief Executive Officer of the Quality Agency have been delegated in relation to the quality review of home care services.

relevant official in relation to a residential care service, means a certification assessor, the Chief Executive Officer of the Quality Agency, a quality assessor, or the Aged Care Commissioner. In relation to home care, a relevant official means the Chief Executive Officer of the Quality Agency or a quality reviewer.

A **staff member** of an approved provider means a person who:

- is at least 16 years old; and
- is employed, hired, retained or contracted by the approved provider (whether directly or through an employment or recruitment agency) to provide care or other services under the control of the approved provider to care recipients; and
- has, or is reasonably likely to have, access to care recipients.

The Principles also provide examples of people who are, and are not, staff members of an approved provider.

A **volunteer** for an approved provider, means a person who:

- is not a staff member of the approved provider; and
- offers his or her services to the approved provider; and
- provides care or other services on the invitation of the approved provider and not solely on the express or implied invitation of the care recipient; and
- has, or is reasonably likely to have, unsupervised access to care recipients; and
- is at least 16 years old, or if the person is a full time student, is at least 18 years old.

This section also notes that a number of expressions used in these Principles are defined in Schedule 1 of the Act.

Part 2 – Access to aged care services

Division 1 – Access to residential care services

Subdivision A – Access by certification assessors

Section 5 – Purpose of this Subdivision

This section describes the purpose of Subdivision A. Subdivision A outlines the responsibilities of an approved provider in relation to the access that must be afforded to a certification assessor in order to review the certification of a service under section 39-4 of the Act.

The Omnibus Repeal Day (Autumn 2014) Bill 2014 that was passed by the House of Representatives on 26 March 2014 and introduced in the Senate on 27 March 2014

proposes, amongst other matters, to repeal provision in the Act in relation to the certification of residential aged care services. If the Bill is passed by the Senate and the repealing provisions come into effect, this Subdivision will become redundant.

Section 6 – Notice of access

This section provides that a certification assessor must give written notice to an approved provider if the assessor requires access to a service for the purpose of a certification review.

The notice must include:

- a statement that the approved provider may refuse the certification assessor entry to the service or may withdraw consent;
- a statement that if entry is refused (or consent to entry is withdrawn), the approved provider may not be complying with its responsibilities under the Act; and
- a statement that failure to comply with the approved provider's responsibilities may result in a sanction being imposed under Part 4.4 of the Act. However, refusing access in the circumstances described in paragraphs 23(b) or (c) of the Principles (because, for example, allowing access would unreasonably disrupt the quality of care and services being provided through the service) does not constitute non-compliance with a responsibility under paragraph 63-1(1)(j) of the Act.

Section 7 – Consent to access service

This section provides that:

- a certification assessor must not access the premises of a residential care service unless the approved provider has consented to the access;
- the approved provider must not unreasonably withhold consent if access to the premises is required because the certification assessor reasonably believes that there is a risk to the safety, health or wellbeing of a care recipient;
- the approved provider may withdraw consent at any time; and
- if asked to leave the premises, the certification assessor must do so.

Section 8 – Certification assessor must show identification

This section states that a certification assessor must provide the approved provider with evidence of the assessor's name and position, photo identification, and a copy of the written notice (described under section 6) before accessing the premises of a residential care service.

Subdivision B – Access by CEO of Quality Agency and quality assessors

Section 9 – Purpose of this Subdivision

This section describes the purpose of Subdivision B which is to describe the responsibilities of an approved provider to allow the Chief Executive Officer of the Quality Agency or a quality assessor, to access a residential care service in order to perform the functions described in the *Australian Aged Care Quality Agency Act 2013*.

Section 10 – Consent to access service

This section provides that the Chief Executive Officer of the Quality Agency or a quality assessor must not access the premises of a residential care service unless the approved provider of the service has consented to the access. The Chief Executive

Officer of the Quality Agency or a quality assessor is not, however, required to give the approved provider notice of a requirement to access the service.

Before the Chief Executive Officer of the Quality Agency or a quality assessor obtains consent to access a service, the approved provider must be informed of the following:

- that the approved provider may refuse to give consent to access the service. However, the approved provider must not unreasonably withhold consent if access to the premises of the service is required because the Chief Executive Officer of the Quality Agency or the quality assessor reasonably believes that there is a serious risk to the safety, health or wellbeing of a person who is being provided with care through the service;
- that the approved provider may withdraw consent to access the service at any time;
- that if the approved provider refuses or withdraws consent, the approved provider may not be complying with its responsibilities under the Act; and
- that failure to comply with its responsibilities under the Act may result in the approved provider being issued with a sanction under Part 4.4 of the Act.

If asked to do so by the approved provider, the Chief Executive Officer of the Quality Agency or a quality assessor must leave the premises of the service.

Section 11 – CEO of the Quality Agency or quality assessor must show identification

This section states that photo identification and evidence of the name and position of the Chief Executive Officer of the Quality Agency or quality assessor must be provided to an approved provider before accessing a residential care service.

Subdivision C – Access by the Aged Care Commissioner

Section 12 – Purpose of this Subdivision

Subdivision C outlines the responsibilities of an approved provider in allowing the Aged Care Commissioner access to a service.

Section 13 – Notice of access

If the Aged Care Commissioner requires access to a residential care service, the Aged Care Commissioner must notify the approved provider. The approved provider must be informed that:

- the approved provider may refuse to give consent or withdraw consent to access the service at any time;
- that, if refusal is given, or consent withdrawn, the approved provider may not be complying with its responsibilities under the Act; and
- that failure to comply with its responsibilities under the Act may result in the approved provider being issued with a sanction under Part 4.4 of the Act.

Section 14 – Consent to access service

Section 14 provides that:

- unless an approved provider has given consent, the Aged Care Commissioner must not access the premises of a residential care service;

- the approved provider must not unreasonably withhold consent if access to the premises is required because the Aged Care Commissioner reasonably believes that there is a risk to the safety, health or wellbeing of a care recipient;
- an approved provider may withdraw consent at any time; and
- if asked to leave the premises, the Aged Care Commissioner must do so.

Section 15 – Aged Care Commissioner must show identification

This section states that photo identification and evidence of the name and position of the Aged Care Commissioner must be provided to an approved provider before the Aged Care Commissioner may access the service.

Division 2 – Access to home care services

Section 16 – Purpose of this Division

This section states that Division 2 outlines the responsibilities of an approved provider to allow the Chief Executive Officer of the Quality Agency or a quality reviewer access to the premises of a home care service. Premises of a home care service means the premises of the approved provider of the service (not the care recipient's home). At least 28 days notification of a site visit must be given to the approved provider of the service, as specified in section 3.4 of the *Quality Agency Principles 2013* made under the *Australian Aged Care Quality Agency Act 2013*.

Section 17 – Consent to access service

This section provides that unless an approved provider has given consent, the Chief Executive Officer of the Quality Agency or a quality reviewer must not access the premises of the provider's home care service.

Before obtaining consent, the Chief Executive Officer of the Quality Agency or a quality reviewer must inform the approved provider:

- that the approved provider may refuse to give consent to access the service.
However, the approved provider must not unreasonably withhold consent if access to the premises of the service is required because the Chief Executive Officer of the Quality Agency or the quality reviewer reasonably believes that there is a serious risk to the safety, health or wellbeing of a person who is being provided with care through the service;
- that the approved provider may withdraw consent to access the service at any time;
- that if access is refused (or consent withdrawn) the approved provider may not be complying with its responsibilities under the Act;
- that failure to comply with its responsibilities under the Act may result in the approved provider being issued with a sanction under Part 4.4 of the Act.

If asked to do so by the approved provider, the Chief Executive Officer of the Quality Agency or a quality assessor must leave the premises of the service.

Section 18 – CEO of the Quality Agency or quality reviewer must show identification

This section states that the Chief Executive Officer of the Quality Agency or a quality reviewer must show an approved provider of a home care service evidence of their name and position and photo identification before accessing the premises of a home care service.

Division 3 – General provisions relating to access

Section 19 – Purpose of this Division

This section states that Division 3:

- specifies other compliance responsibilities of an approved provider, if consent to access a service has been given to a relevant official; and
- provides that certain acts by an approved provider do not constitute non-compliance with the responsibilities of the approved provider under the Act.

This section notes that the definition of a *relevant official* is at section 4. Section 4 defines relevant official to mean in relation to a residential care service, a certification assessor, the Chief Executive Officer of the Quality Agency, a quality assessor, or the Aged Care Commissioner. In relation to home care, a relevant official means the Chief Executive Officer of the Quality Agency or a quality reviewer.

Section 20 – Hours of access

This section provides that an approved provider of a residential care service or a home care service must allow a relevant official access to the premises of a service:

- during business hours; and
- outside of business hours if:
 - the official is acting on a serious complaint where a care recipient’s safety, health or wellbeing may be at risk; or
 - the official needs to examine a process or practice of the service that does not occur during business hours; or
 - access is undertaken in a manner that does not unreasonably disrupt the quality of care and services being provided through the service.

If a relevant official is not granted access to the premises outside of business hours, because the quality of care provided would be disrupted, then an alternative time for access must be agreed to by the relevant official and the approved provider.

Section 21 – Access to premises, documents etc.

This section provides that an approved provider must allow a relevant official to do any of the following during a visit:

- inspect any part of the premises of the service;
- take photographs (including a video recording), or make sketches, of the premises or any substance or thing at the premises;
- inspect, examine and take samples of, any substance or thing on or in the premises;
- inspect any document or record kept by the approved provider;
- take extracts from, or copies of, any document or record kept by the approved provider;
- operate any equipment on the premises to see whether the equipment, or a disk, tape or other storage device on the premises that is associated with the equipment, contains any information relevant to the performance of the functions of the official; and
- take copies, in documentary form or on a disk, tape or other storage device, of information that is relevant to the performance of the functions of the official.

The approved provider:

- must allow a relevant official to take any equipment or material necessary to perform their functions, onto the premises;
- may refuse to let a relevant official do one of the activities detailed above if it is not relevant to the operation of the service;
- may refuse to let a relevant official do one of the activities detailed above in relation to:
 - a care recipient or their property, unless the care recipient has consented; and
 - a staff member or their property, unless the staff member has consented.

Section 22 – Access to staff members and other persons

This section states that a relevant official must not be obstructed from accessing or questioning any person on the premises of the service, if the access or questioning is relevant to the functions of the official and the official considers the access or questioning relevant or necessary to obtain information about the operation of the service or about whether the approved provider is meeting its obligations.

Section 23 – Refusal of access

This section outlines acts by an approved provider that do not constitute non-compliance with the responsibilities of the approved provider under the Act. These acts include:

- refusing to grant a relevant official access to a service because the official has not complied with its obligations in regard to gaining access to a service. For example, because the official has not provided the required notice or has failed to show identification;
- refusing to grant a relevant official access to a service outside of business hours, other than in an emergency situation or where a risk to a care recipient has been identified, because doing so would disrupt the quality of care and services being provided by the service;
- refusing to allow a relevant official to do one of the activities in section 21(1)(b), (c), (d), (e), or (g) because it is not relevant to the operation or the administration by the approved provider of the service; and
- refusing to allow a relevant official to access or question a care recipient or a staff member, or access the property of a care recipient or staff member, if the care recipient or the staff member has not consented to the access or questioning.

Part 3 – Information to be given to Minister or Secretary

Division 1 – Information about residential care services

Section 24 – Purpose of this Division

The purpose of Division 1 of Part 5 is to specify the responsibilities of an approved provider to provide the Secretary or Minister with certain information (in accordance with paragraph 63-1(1)(m) of the Act). Division 1 also sets out the period within which an approved provider must notify the Secretary of the entry of a care recipient into the service (for subsection 63-1B(2) of the Act).

Section 25 – Information about unexplained absence of care recipients

This section provides that if a care recipient is absent from the service, the absence is unexplained, and has been reported to the police, the approved provider must inform

the Secretary. The information must be provided to the Secretary no later than 24 hours after the absence was reported to the police.

Section 26 – Information about accommodation payments, contributions, bonds and charges

This section enables the Minister to request information, in writing, from approved providers in order to prepare an annual report on the operation of the Act.

The section provides that if the Minister requests information from an approved provider about accommodation payments, accommodation contributions, accommodation bonds or accommodation charges, the approved provider must comply with the request within the time specified as long as the time provided is reasonable.

The information requested by the Minister may relate to:

- the amounts of accommodation payments and contributions paid as refundable deposits and daily payments;
- the repayment of refundable deposits;
- the amount of accommodation bonds paid;
- the repayment of accommodation bonds;
- the amount of accommodation charges paid.

The section provides that the Minister must not request, and the approved provider must not give, personal information relating to an individual care recipient. A note to the section draws the reader's attention to section 62-1 of the Act which prohibits the disclosure of personal information except in limited circumstances.

Section 27 – Information about building, upgrading and refurbishment

For the purposes of preparing an annual report on the operation of the Act, the Minister may require information about any building activity.

This section enables the Minister to request, in writing, information from approved providers about the extent of any building, upgrading or refurbishment of services. If the Minister requests such information, the approved provider must comply with the request within the time provided (provided the time specified is reasonable).

Section 28 – Period for notifying Secretary about entry of care recipient to residential care service

Subsection 63-1B(2) of the Act provides that an approved provider must, in the form approved by the Secretary and within the period specified in the Accountability Principles, notify the Secretary of each care recipient who enters a residential care service (other than as a recipient of respite care).

For the purposes of this subsection, section 28 states that an approved provider must notify the Secretary of the entry of a care recipient into a residential care service within 28 days of the care recipient entering the service.

Division 2 – Information about home care services

Section 29 – Purpose of this Division

Division 2 specifies (for the purposes of paragraph 63-1(1)(m) of the Act) the requirements for an approved provider to notify the Secretary of certain information about care recipients who start being provided with home care on or after 1 July 2014.

Section 30 – Notification of start of home care

Paragraph 63-1(1)(m) of the Act enables the Accountability Principles to set out other responsibilities of approved providers.

Section 30 of the Principles makes it a responsibility of approved providers of home care to notify the Secretary, in writing, of any care recipients that start to receive home care from 1 July 2014. The written notice must be in a form approved by the Secretary and must be given within 28 days of the care recipient starting to be provided with the home care.

Part 4 – Financial reports

Division 1 – Preliminary

Section 31 – Purpose of this Part

The purpose of Part 4 is to specify, for paragraph 63-1(1)(m) of the Act, responsibilities of approved providers of residential care and home care in relation to financial reporting. This Part also makes provision in relation to the period that is a financial year for an approved provider of a residential care or home care service.

Section 32 – What is an approved provider's financial year

This section states that a financial year for an approved provider is the period of 12 months beginning on 1 July unless the Secretary determines another period of 12 months for the approved provider.

This section enables an approved provider to apply to the Secretary for a determination that a period of 12 months beginning on the first day of any month other than July is the approved provider's financial year.

This section provides that the Secretary may only determine another period to be the approved provider's financial year if the Secretary is satisfied that it would be impracticable for the approved provider to comply with its responsibilities under Division 2, 3 or 4 (whichever is applicable) in relation to a period starting on 1 July.

If the Secretary refuses to make a determination that another period of 12 months is the approved provider's financial year, the Secretary is required to give the approved provider a written statement of reasons for the decision.

Section 33 – Reviewable decision

This section states that a decision by the Secretary to refuse to make a determination that a period of 12 months other than the period starting on 1 July is an approved provider's financial year is a reviewable decision. This means that the approved provider would be able to seek reconsideration of the decision under section 85-4 of

the Act and, if the decision is confirmed, varied or set aside by the Secretary, the approved provider could apply to the Administrative Appeals Tribunal for review of the decision.

Division 2 – Responsibilities of approved providers of residential care services other than State or Territory approved providers

Section 34 – Purpose of this Division

Division 2 sets out responsibilities of approved providers of residential care services other than approved providers that are States or Territories or authorities of a State or Territory.

Section 35 – Approved provider must prepare financial report

This section sets out the requirements for the financial report that an approved provider of a residential care service must prepare for each financial year.

An approved provider that has more than one residential care service may choose to prepare a separate financial report for each of its residential care services, a combined report for all its residential care services, or a combination of combined reporting for some services and separate or combined reporting for other services. The term “entity” is used in this section to refer to the single service or group of services covered by a financial report.

Subsection (2) states that the approved provider’s financial report must

- be a general purpose financial report within the meaning of the *Statement of Accounting Concepts SAC 2 Objective of General Purpose Financial Reporting*, as in force on 1 July 2014; and
- be written as if the entity were a reporting entity within the meaning of the *Statement of Accounting Concepts SAC 1 Definition of the Reporting Entity*, as in force on 1 July 2014; and
- be prepared in accordance with the Australian accounting standards relevant to the report as in force at the time the report is prepared; and
- give a true and fair view of the financial position and performance of the reporting entity for the financial year; and
- treat residential care as a reportable segment within the meaning of the Australian accounting standard relating to segment reporting that applies to the financial year; and
- for the Australian accounting standard relating to segment reporting that applies to the financial year, if the entity is not an entity to which the standard applies—be written as if the entity were a reporting entity to which the standard applies.

A note below subsection (2) explains that the *Statement of Accounting Concepts SAC 1* and the *Statement of Accounting Concepts SAC 2*, which are referred to in subsection (2), could be found at <http://www.aasb.gov.au> in 2014.

Section 36 – Auditing of financial reports

This section sets out the requirements for auditing of a financial report prepared under section 35. The general rule is that a financial report must be audited by a registered company auditor within the meaning of the *Corporations Act 2001*. However, this

section provides that the Secretary may approve a person who is not a registered company auditor to audit a financial report if the Secretary is satisfied that the person has appropriate qualifications and experience.

The approved provider must obtain an audit opinion from the person auditing the financial report that includes the following statements:

- whether the financial report is in accordance with the Australian accounting standards relevant to the report as in force at the time the report was made; and
- whether the financial report gives a true and fair view of the financial position and performance of the entity to which the financial report relates for the relevant financial year.

Section 37 – Provision of financial reports to Secretary etc

This section states that an approved provider of a residential care service must give a copy of its audited financial report and the audit opinion to the Secretary within 4 months of the end of the financial year to which the report relates.

This section also requires an approved provider to give, if asked, a copy of the most recent audited financial report to a care recipient of the service to which the report relates, a person who is approved under Part 2.3 of the Act as a recipient of residential care and who is considering receiving residential care through the service to which the report relates or to a representative of a care recipient or prospective care recipient.

Section 38 – Circumstances in which approved provider is taken to have complied with this Division

This section states that if an approved provider was only responsible for the operation of a service for part of a financial year, the approved provider is taken to have met its reporting responsibilities under this Division if the approved provider complies with the requirements of sections 35, 36 and 37 for that part of the financial year during which they were responsible for the operation of the service.

Division 3 – Responsibilities of State and Territory approved providers of residential care services

Section 39 – Purpose of this Division

Division 3 sets out responsibilities of approved providers of residential care services that are States or Territories or authorities of a State or Territory.

Section 40 – Approved provider must give segment report to Secretary

This section provides that an approved provider of a residential care service that is a State or Territory or an authority of a State or Territory must, within four months of the end of the approved provider's financial year, give the Secretary a segment report in relation to the service for the financial year.

A note under subsection 40(1) explains that an approved provider of two or more residential care services may choose to prepare a separate financial report for each service, a combined report that covers all its services, or a combination of combined reporting for some services and separate or combined reporting for other services.

The segment report must treat the residential care service (or services, if the approved provider has chosen to prepare a report covering more than one service) as a reportable segment. The term “reportable segment” has the meaning given by the Australian accounting standard relating to segment reporting that applies to the financial year to which the report relates.

The segment report is not required to be audited.

Section 41 – Circumstances in which approved provider is taken to have complied with this Division

This section states that if an approved provider was only responsible for the operation of a service for part of a financial year, the approved provider is taken to have met its reporting responsibilities under this Division if the approved provider complies with the requirements of section 40 for that part of the financial year during which they were responsible for the operation of the service.

Division 4 – Responsibilities of approved providers of home care services

Section 42 – Purpose of this Division

Division 4 sets out responsibilities of approved providers of home care services. These responsibilities apply whether or not an approved provider is a State or Territory or an authority of a State or Territory.

Section 43 – Approved provider must give financial report to Secretary

This section states that an approved provider of a home care service must give the Secretary a financial report in relation to the service within 4 months of the end of the approved provider’s financial year. The financial report must be in a form approved by the Secretary and it is not required to be audited.

A note under section 43 explains that an approved provider of two or more home care services may choose to prepare a separate financial report for each service, a single report that covers all their services, or a report that covers some of their services and separate reports for their other services.

Section 44 – Circumstances in which approved provider is taken to have complied with this Division

This section states that if an approved provider was only responsible for the operation of a service for part of a financial year, the approved provider is taken to have met its reporting responsibilities under this Division if the approved provider complies with the requirements of section 43 for that part of the financial year during which they were responsible for the operation of the service.

Part 5 – Participation in aged care workforce census

Section 45 – Purpose of this Part

Part 5 specifies, for paragraph 63-1(1)(m) of the Act, responsibilities of an approved provider of an aged care service to participate in an aged care workforce census. These responsibilities apply to approved providers of residential care, home care and flexible care.

Section 46 – Participation in aged care workforce census

This section provides that if an approved provider receives an aged care workforce census form sent by or on behalf of the Department, the approved provider must complete the form and return it to the Department by the date specified in the form. This responsibility only applies if the approved provider that receives the form was responsible for the operation of the aged care service for the whole of the period covered by the census.

Part 6 – Responsibilities in relation to certain staff members and volunteers

Section 47 – Purpose of this Part

This section states that the purpose of Part 6 is to specify the responsibilities of an approved provider to ensure that:

- each staff member or volunteer has been issued with a police certificate (or made a statutory declaration) stating that the person has not been convicted of certain offences (such as murder or sexual assault); and
- that anyone with certain criminal convictions, does not provide aged care.

Section 48 – Requirements in relation to new staff members and volunteers

This section states the factors an approved provider must be satisfied of, before allowing a person to become a staff member or volunteer of the service.

An approved provider must not allow a person to become a staff member or volunteer, unless the approved provider is satisfied that:

- subject to section 49, there is for the person a police certificate that is less than three years old; and
- the police certificate does not record that the person has been convicted of murder or sexual assault or convicted of, and sentenced to imprisonment for, any other form of assault; and
- if the person has been, at any time after turning 16, a citizen or permanent resident of a country other than Australia - the person has made a statutory declaration stating that the person has never been convicted of murder or sexual assault or convicted of, and sentenced to imprisonment for, any other form of assault.

Section 49 – Arrangements for new staff members or volunteers who do not yet have police certificates

This section outlines the circumstances in which an approved provider may allow a person to become a staff member or volunteer despite the requirements of section 48 not being met.

If a police certificate has not been issued, the approved provider may still allow a person to become a staff member or volunteer provided that:

- the care or other service to be provided by the person is essential;
- an application for a police certificate has been made prior to the person becoming a staff member or volunteer;
- until the certificate is issued, the person will be appropriately supervised when they have access to care recipients; and
- the person provides a statutory declaration stating that they have never been convicted of murder or sexual assault or convicted of, and sentenced to imprisonment for, any other form of assault.

Section 50 – Continuing responsibilities of approved providers

This section provides that, except for the circumstances specified in section 49, an approved provider must at all other times ensure that:

- there is a police certificate that is no more than three years old for each staff member or volunteer; and
- the certificate does not record that the person has been convicted of murder or sexual assault or convicted of, and sentenced to imprisonment for, other forms of assault.

An approved provider must also:

- ensure that a staff member or volunteer does not continue as a staff member or volunteer unless the provider is satisfied that a police certificate or statutory declaration does not record that the person has been convicted of murder or sexual assault or convicted of, and sentenced to imprisonment for, any other form of assault;
- take reasonable steps to require staff members and volunteers to notify the approved provider if the person is convicted of murder or sexual assault, or convicted of, and sentenced to imprisonment for, any other form of assault; and
- ensure that a staff member or volunteer is not allowed to continue working or volunteering if the provider is satisfied on reasonable grounds that the person has been convicted of murder or sexual assault or convicted of, and sentenced to imprisonment for, any other form of assault.

Section 51 – Spent convictions

This section states that nothing mentioned in this Part affects the operation of Part VIIC of the *Crimes Act 1914*. Part VIIC of the *Crimes Act 1914* deals with aspects of the collection, use and disclosure of old conviction information. The main element of this law is a ‘Spent Convictions Scheme’. The aim of the Scheme is to prevent discrimination on the basis of certain previous convictions, once a waiting period (usually 10 years) has passed and provided the individual has not re-offended during this period. The Scheme also covers situations where an individual has had a conviction quashed or has been pardoned.

Part 7 – Circumstances in which requirement to report allegation or suspicion of reportable assault does not apply

Section 52 – Purpose of this Part

Subsection 63-1AA(2) of the Act states that if an approved provider receives an allegation of, or starts to suspect on reasonable grounds, a reportable assault, the approved provider must report the allegation or suspicion as soon as reasonably practicable, and in any case within 24 hours, to the police and the Secretary.

Subsection 63-1AA(3) of the Act provides that the requirement described above does not apply in the circumstances, if any, set out in the Accountability Principles.

Part 7 of the Principles describes the circumstances in which an alleged or suspected assault is not required to be reported.

Section 53 – Circumstances in which approved provider is not required to report alleged or suspected reportable assault

Section 53 describes two circumstances in which an approved provider is not required to report an alleged or suspected reportable assault.

An approved provider does not have to report an allegation or suspicion of a reportable assault to the police or the Secretary if:

- within 24 hours of the receipt of the allegation (or the start of the suspicion), the approved provider forms an opinion that the assault was committed by a care recipient; and
- before the receipt of the allegation or the start of the suspicion, the care recipient had been assessed by an appropriate health professional as suffering from a cognitive or mental health impairment. Depending on the circumstances, an appropriate health professional may include a geriatrician, a medical practitioner or a Division 1 registered nurse; and
- within 24 hours of the receipt of the allegation or start of the suspicion, the provider puts in place arrangements to manage the care recipient's behaviour; and
- the approved provider has a copy of the assessment and a record of the management arrangements put in place. The provider must also keep consolidated records of all allegations or suspicions of reportable assaults, as required by the *Records Principles 2014*.

The second circumstance in which an approved provider need not report an allegation or suspicion of a reportable assault, is if an allegation, or suspicion, is reported to police and the Secretary but at a later time there is another allegation, or suspicion, that relates to the same (or substantially the same) factual situation as the earlier allegation, or suspicion. In this case, the subsequent allegation, or suspicion, does not also need to be reported to the police and the Secretary.

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

Accountability Principles 2014

The *Accountability Principles 2014* (the Principles) are compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Legislative Instrument

The Principles describe:

- arrangements for access to residential aged care services by certification assessors, the CEO of the Australian Aged Care Quality Agency and quality assessors and the Aged Care Commissioner;
- arrangements for access to the premises of approved providers of home care services by the CEO of the Quality Agency and quality reviewers;
- the responsibilities of an approved provider in giving certain information to the Secretary or the Minister about the service;
- the responsibilities of approved providers in relation to financial reporting;
- the responsibility of an approved provider to participate in the aged care workforce census;
- the responsibilities of an approved provider in relation to staff members and volunteers requiring police certificates; and
- the circumstances in which the requirement to report allegations or suspicions of reportable assaults does not apply.

Human Rights Implications

By facilitating access to aged care services by the Australian Aged Care Quality Agency and the Aged Care Commissioner to review the standard of care provided to care recipients, the Principles promote the right of care recipients to an adequate standard of living and the right to the enjoyment of the highest attainable standard of physical and mental health as contained in article 11(1) and article 12(1) of the International Covenant on Economic, Social and Cultural Rights, and article 25 and article 28 of the Convention on the Rights of Persons with Disabilities.

The Principles engage the right to privacy contained in article 17 of the International Covenant on Civil and Political Rights and article 22 of the Convention on the Rights of Persons with Disabilities in that they require the approved provider of a residential care service to notify the Secretary if a care recipient is absent from the service, the absence is unexplained and the absence has been reported to the police. Insofar as the Principles limit the care recipient's right to privacy, the limitation is necessary to enable the Secretary to monitor the steps taken to find the missing care recipient and to review the systems the approved provider has in place to protect the welfare of care recipients who might be at risk because of wandering behaviour. The limitation is reasonable and proportionate, as only unexplained absences that are of such concern to the approved provider that are reported to the police are required to be reported to the Secretary.

The Principles engage the right to work contained in article 6 of the International Covenant on Economic, Social and Cultural Rights in that they prevent an approved provider from employing a person in a position that would be reasonably likely to give the person access to care recipients if the person's police certificate shows that the person has been convicted of murder or sexual assault or convicted of, and sentenced to imprisonment for, any other form of assault. Insofar as the Principles limit a person's right to work, the limitation is a necessary, reasonable and proportionate measure to protect the safety, health and well-being of vulnerable care recipients.

Conclusion

This legislative instrument is compatible with human rights as it promotes the human right to an adequate standard of living and the highest attainable standard of physical and mental health. Insofar as the legislative instrument limits the right to privacy and the right to work, the limitations are necessary, reasonable and proportionate.

**Senator the Hon Mitch Fifield
Assistant Minister for Social Services**